

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THANIA L. AND DELIO L.,
Appellants,

v.

BILL C. AND B.L.,
Appellees.

No. 2 CA-JV 2018-0126
Filed November 8, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100SV201700093
The Honorable Megan K. Weagant, Judge

AFFIRMED

COUNSEL

Ritter Law Group L.L.C., Florence
By Matthew Ritter
Counsel for Appellants

Law Offices of Matthew S. Schultz P.C., Tempe
By Matthew S. Schultz
Counsel for Appellee Bill C.

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

S T A R I N G, Presiding Judge:

¶1 Thania L. and Delio L. appeal from the juvenile court’s order denying their petition to terminate Bill C.’s parental rights to his five-year-old biological son, B.L. They argue the court erred in concluding they had failed to establish termination was warranted pursuant to A.R.S. § 8-533(B)(6), a statutory ground for termination based on a putative father’s failure to register a notice of claim of paternity pursuant to A.R.S. § 8-106.01. In addition, they challenge the court’s finding that they had failed to establish termination was in B.L.’s best interests. We affirm the court’s ruling.

Factual and Procedural Background

¶2 Many of the facts relevant to this matter can be found in this court’s opinion, *Castillo v. Lazo*, 241 Ariz. 295, ¶ 3 (App. 2016), a paternity action in which we reversed the trial court’s grant of summary judgment in favor of Thania. In that case, we explained, “[b]etween September 2012 and April 2013, [Bill] and [Thania] had a sexual relationship, and in July 2013, [Thania] gave birth to a son, B.L. During this time, [Thania] was married to another man, Delio.” *Id.* Although Delio was “listed as the father on B.L.’s birth certificate . . . [he] was working overseas during the time of conception and could not be the biological father of B.L.” *Id.* We further noted that, as of that time, Bill and his family had “established a relationship with B.L., including frequent visitations, and [he had] provided [Thania] with money for B.L.’s support.” *Id.* We concluded the trial court in the paternity action had erred in determining Bill’s action was barred pursuant to A.R.S. § 25-812(E), ruled he was “entitled to bring this paternity action pursuant to [A.R.S.] § 25-803(A)(2),” and remanded the case for further proceedings. *Id.* ¶¶ 13, 18, 19.

¶3 After remand, the domestic relations trial court ordered the parties to participate in genetic testing and scheduled a non-jury trial for October 17, 2017. On September 25, Bill filed a motion for summary judgment on the issue of paternity, based on a DNA test result reporting a

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99.99% probability that he was B.L.'s father. The court set a response date, but, on the first day of trial, it noted no response had been filed, and it signed "the order as to paternity," granting Bill summary judgment as to paternity, having concluded that he "is the natural father" of B.L., and directing preparation of a "new" birth certificate for B.L., "reflecting Bill [C.] as the father." In continuing the trial until December 4, 2017, the court stated its "focus" was on "whether or not [Bill] gets involved in legal decisionmaking [for] this child and whether or not he has parenting time with the child."

¶4 On November 14, 2017, Thania and Delio filed a petition to terminate Bill's parental rights on grounds that he had abandoned B.L., *see* § 8-533(B)(1), and failed to file a notice of claim of paternity as prescribed in § 8-106.01, *see* § 8-533(B)(6). They also alleged that "[t]he parties remain in litigation over the Paternity Petition" filed by Bill. After a contested termination hearing on April 2, 2018, the juvenile court denied the petition, finding Thania and Delio had failed to establish either statutory ground and had also failed to establish termination would be in B.L.'s best interests. This appeal followed.

Discussion

¶5 We review a juvenile court's rulings in a proceeding to terminate parental rights for an abuse of discretion, and we view the evidence in the light most favorable to sustaining those rulings. *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶¶ 2, 6 (App. 2016). But we review the court's legal determinations de novo. *See Meryl R. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 24, ¶ 4 (App. 1999). A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for termination and a preponderance of evidence that termination of the parent's rights is in the children's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order in a termination proceeding unless we can say as a matter of law that no reasonable person could have reached the same result, in light of the applicable evidentiary standard. *Cf. Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10 (App. 2009) (affirming termination order).

¶6 In ruling that Thania and Delio had failed to establish a ground for termination pursuant to § 8-533(B)(6), the juvenile court wrote:

On October 17, 2017, [the domestic relations trial court] entered an order establishing [Bill] as

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legal father of [B.L.]. That order has never been disturbed. The termination petition in this case was filed on November 14, 2017. The Court agrees with [Bill] that this [§ 8-533(B)(6)] ground fails because, at the time of the filing of the Petition to Terminate, [he] was neither a putative nor potential father of the child, as paternity was already legally established by judicial order. Thus, the Court finds that neither A.R.S. § 8-106.06 nor § 8-533(B)(6) apply in this matter. Therefore, termination on this ground is DENIED.

The couple challenges that ruling on appeal,¹ arguing we should reverse the court's denial and terminate Bill's parental rights "because [he] failed to register as a putative father under . . . § 8-106.01 despite the time and opportunity to do so and because termination is in the best interest of the child." But they fail to address the court's determination that Bill's paternity had already been established by court order in his domestic relations case, a fact that distinguishes his status from that of the father in *Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111, ¶¶ 6-11 (2017), the sole case cited by Thania and Delio in support of their assertion that evidence of "a putative father's failure to file a notice of claim of paternity" in compliance with § 8-106.01 is "sufficient to justify the termination of the parent/child relationship."

¶7 In *Frank R.*, the putative father had filed a California paternity action before he learned of an earlier-filed Arizona petition to terminate the rights of an allegedly unknown "John Doe" father, and the California action was quashed in favor of an amended Arizona termination proceeding. 243 Ariz. 111, ¶¶ 6-11. Thus, Frank R. continued to have the status as a "putative" father until his parental rights were terminated pursuant to § 8-533(B)(6)—for failing to timely register after he had been served with an amended termination petition alerting him to the need to do so. *Id.*

¹ Thania and Delio do not challenge the juvenile court's determination that they failed to establish the statutory ground of abandonment. Accordingly, we do not address that aspect of the court's ruling. Cf. *Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, ¶ 5 (App. 2017) (failure to challenge termination on specific statutory ground constitutes abandonment and waiver on appeal).

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¶8 But according to our supreme court, “[a] putative father is a man who is or claims to be the father of the child and whose paternity has not been established.” *David C. v. Alexis S.*, 240 Ariz. 53, ¶ 17 (2016). The juvenile court correctly ruled that Bill was not a “putative” father when Thania and Delio filed their termination petition, because the domestic relations court had already signed an order establishing his paternity.²

¶9 Because the juvenile court correctly ruled that Thania and Delio failed to establish a statutory ground for termination, we need not address their argument that the court erred in concluding they also failed to establish that termination of Bill’s rights would be in B.L.’s best interests. See *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990) (“[B]est interests of the child are a necessary, but not exclusively sufficient, condition for an order of termination”; “constitutional [parental] rights can be overridden only by the combined elements of statutorily defined improper behavior by the parent and the child’s best interests”).

²According to Thania and Delio’s opening brief, on October 18, 2017, they filed, in the domestic relations trial court, a motion to alter the order establishing Bill’s paternity, in which they alleged they had not opposed Bill’s motion for summary judgment because they had been served only with the statement of facts in support of the motion, and not the motion or associated form of order, which they say they otherwise would have opposed. They also allege, without citation to any record document, that the domestic relations court stated on November 13, 2017 – the day before the couple filed their petition to terminate Bill’s parental rights – that it would address the motion to alter on December 4, 2017, the continued date of the trial in that court. And they allege that, on December 4, 2017, the domestic relations court stayed those proceedings. Although Thania and Delio assert that “[t]he parties remain in litigation over the Paternity Petition filed by [Bill] by virtue of competing paternity presumptions,” they cite no authority suggesting the paternity order is without effect simply because they filed a motion to alter it. Moreover, nothing related to a “motion to alter” the paternity order is included in the record before us. “When ‘matters are not included in the record on appeal, the missing portions of the record will be presumed to support the action of the trial court.’” *State v. Geeslin*, 223 Ariz. 553, ¶ 5 (2010) (quoting *State v. Zuck*, 134 Ariz. 509, 513 (1982)).

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Disposition

¶10 Thania and Delio have not sustained their burden of establishing the juvenile court erred when it denied their petition to terminate Bill's parental rights to B.L., and we therefore affirm the court's order. Bill has requested an award of attorney fees pursuant to Rule 21, Ariz. R. Civ. App. P. and A.R.S. § 12-349(A)(1) and (2), asserting this appeal is "unjustified and legally and factually deficient." In our discretion, we deny his request.